

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
JASPER DIVISION**

**DAVID SCOTT FROST,**

**Plaintiff,**

**v.**

**TOMMY MOORE, *et al.*,**

**Defendants.**

**Case No. 6:19-cv-01319-LCB-SGC**

**MEMORANDUM OPINION**

The magistrate judge entered a report on October 9, 2020, recommending this action be dismissed without prejudice for failing to state a claim upon which relief can be granted and for seeking monetary relief from a defendant immune from such relief, pursuant to 28 U.S.C. § 1915A(b)(1)-(2). (Doc. 22). Specifically, the magistrate judge concluded: (1) the Eleventh Amendment bars the plaintiff's claims against the Alabama Department of Corrections and Limestone Correctional Facility; and (2) the plaintiff failed to state a claim for relief against the remaining defendants for false imprisonment, inadequate medical care, or violation of the Americans with Disabilities Act. *Id.* at 9–22. The plaintiff filed a pleading on October 20, 2020, which was docketed as objections to the report. (Doc. 24).

However, the plaintiff's October 20, 2020 submission does not object to any specific portion of the magistrate judge's report. *Id.* Instead, it appears the plaintiff

was attempting to file a notice of appeal. *Id.* The magistrate judge’s report and recommendation is not a final, appealable order. *See Perez-Priego v. Alachua Cnty. Clerk of Court*, 148 F.3d 1272, 1273 (11th Cir. 1998); *see also Bogle v. Orange Cnty. Bd. Of Cnty. Comm’rs*, 162 F.3d 653, 661 (11th Cir. 1998) (a notice of appeal must “designate an existent judgment or order, not one that is merely expected or that is, or should be, within the appellant’s contemplation when the notice of appeal is filed”); *World Fuel Corp. v. Geithner*, 568 F.3d 1345, 1348 (11th Cir. 2009) (“A final order is one that ends the litigation on the merits and leaves nothing for the court to do but execute its judgment.”) (quotations and citations omitted). Thus, to the extent the plaintiff intended to file a notice of appeal, it is premature. To the extent the plaintiff’s October 20, 2020 filing may pose objections, they are **OVERRULED**.

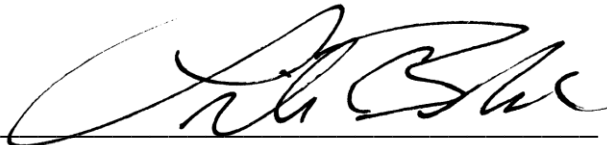
Having carefully reviewed and considered *de novo* all the materials in the court file, the court **ADOPTS** the magistrate judge’s report and **ACCEPTS** her recommendation.<sup>1</sup> Therefore, in accordance with 28 U.S.C. § 1915A(b)(1)-(2), this action is due to be dismissed without prejudice for failing to state a claim upon which relief can be granted and for seeking monetary relief from a defendant who is immune from such relief.

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<sup>1</sup> This ruling does not cure the plaintiff’s premature notice of appeal. *Perez-Priego*, 148 F.3d at 1273.

A separate order will be entered.

**DONE** and **ORDERED** this February 5, 2021.



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**LILES C. BURKE**  
UNITED STATES DISTRICT JUDGE